

REMARKS

Currently, claims 21, 27, 28, and 31-60 are pending. Applicants appreciate the withdrawal of all of the objections and rejections set forth in the prior Office Action of March 30, 2010. Applicants also appreciate the indication that claims 37-60 contain allowable subject matter.

I. Finality of Office Action is Improper

At page 4, the Action states that “Applicant’s amendment necessitated the new ground(s) of rejection presented in this Office Action.” Applicants respectfully disagree.

As acknowledged in the Action at page 3, the reference cited by the Examiner in the present Action (EP 1 024 145 (O’Connell)) was submitted by Applicants in an Information Disclosure Statement filed May 12, 2008 and was marked as considered by the Examiner on March 25, 2010. Thus, the Examiner considered this reference before mailing the previous Office Action on March 30, 2010.

Applicants note that the amendments to independent claim 21 submitted on July 27, 2010 corrected a typographical error, namely replacing zero (0) in C (0) NR^cR^d with the letter O, as in -C(O)NR^cR^d; removed the following language from the claim:

or said compound is a variant of any of the above which differs in the oxidation state of one or more of the ketide units, wherein said ketide unit is selected from the group consisting of: -CO-, -CH(OH)-, alkene CH-, and CH₂)

and added the following proviso: “with the proviso that when R⁸ is H, R¹⁵ cannot also be H.” Applicants’ amendments did not expand the scope of claim 21 beyond the subject matter that was claimed and considered by the Examiner in the March 30, 2010 Office Action. Thus, Applicants’ amendments could not have prompted a rejection over O’Connell that could not have been made in the previous Office Action of March 30, 2010.

Accordingly, Applicants’ amendment *did not* necessitate the new ground(s) of rejection presented in this Office Action, and the finality of this rejection is improper. Applicants respectfully request that the Examiner withdraw the finality of this rejection.

II. Section 102(b) Rejection Overcome

Claims 21, 27, 28 and 31-36 have been rejected under 35 U.S.C. §102(b) as being anticipated by EP 1 024 145 (O’Connell). Applicants respectfully traverse this rejection.

Applicants have amended independent claim 21 to recite “R¹⁶ = H” removing the recitation that R¹⁶ = OH.

Applicants respectfully submit that amended claim 21 is patentable over O'Connell and request that this rejection be withdrawn.

Claims 27, 28, and 31-36 each depend from patentable independent claim 21. For at least this reason and without acquiescing in the Action's rejections of these claims, Applicants respectfully submit that these dependent claims are also patentable and request that these rejections be withdrawn. Applicants expressly reserve the right to argue the separate patentability of one or more of these dependent claims at a future date.

III. Conclusion

All claim rejections being addressed in full, Applicants respectfully request the withdrawal of the outstanding objections and rejections and the issuance of a Notice of Allowance. Should the Examiner have any questions regarding the foregoing, Applicants respectfully request that the Examiner contact the undersigned, who can be reached at (919) 483-9024.

Respectfully submitted,

/J. MICHAEL STRICKLAND/

J. Michael Strickland
Attorney for Applicants
Reg. No. 47,115

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Customer No. 23347
GlaxoSmithKline
Global Patents
Five Moore Drive, P.O. Box 13398
Research Triangle Park, NC 27709-3398
Telephone: (919) 483-9024
Facsimile: (919) 483-7988